

UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
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May 24, 2000

In Reply Refer To:  
3160 (CO-934) P

EMS Transmission  
Instruction Memorandum No. CO-2000-028  
Expires: 09-30-2000

To: Field Office Managers

From: Deputy State Director, Resource Services

Subject: Enforcement Action on Spills

Issue

A recent oil and gas Inspection and Enforcement (I&E) review of the Colorado Field Offices determined that Incidents of Non-Compliance (INCs) were being issued to operators to clean-up minor oil and water spills (spills) on location. The Washington Office (WO) policy for dealing with spills on location is to require issuance of an order to the operator to clean up the spill. Subsequent to the recent National I&E compliance broadcast and our statewide conference call, the field office have recommended that the issuance of INCs, rather than orders, be used to require clean-up of spills.

Their reasoning is that an unmitigated spill can be interpreted as a violation of regulation; INCs gather the attention and stimulate action from operators more so than orders; INCs require less Automated Fluid Minerals Support System (AFMSS) documentation work than orders, and that operators have not filed appeals over receiving an INC to clean-up spills rather than an order.

Discussion

When dealing with spills, two issues exist: 1) spill notification; and, 2) mitigation of the spill. The current National policy is that since the spill notification requirements are clearly outlined, INC's covering notification can be properly issued. However, the WO does not interpret the regulations as specifically stating that spills are not allowed and thus, require that the operator be first given an order

with an abatement period to define the spill as a problem and provide further direction as to proper mitigation. After the abatement period, the inspector would reinvestigate and issue an INC if the spill wasn't mitigated. This process clearly defines what the problem is and how to correct it. We disagree with this interpretation for the following reasons:

The regulations governing spill notification are found in Notice to Lessee (NTL) 3A. In summary, NTL 3A does not require BLM notification of spills less than ten barrels in non-sensitive areas. The operator is required to report the volumes on Form 3160. However, it should be noted that NTL 3A does not relieve the operator of the requirement to clean-up the spill, nor does it prescribe mitigation.

The operator's environmental obligations are governed by 3162.5-1(b) and (c). In summary, 3162.5-1(b) requires the operator to exercise due diligence to assure that leasehold operations do not result in undue damage to surface resources. Section 3162.5-1(c) requires that the operator report all spills or leakages of oil, gas and produced water in accordance with applicable notices (NTL-3A), and that the operator exercise due diligence in taking necessary measures to control and remove the pollutants, subject to approval by the authorized office.

We interpret this regulation to mean that the operator is to take the initiative to contact BLM for instructions on removing the pollutants. We further believe that spills clearly fall under the category of "pollutant" and needs no further clarification. Consequently, failure to contact the BLM to mitigate a spill would be a violation of the aforementioned regulations and an INC can be properly issued. The corrective action would be to mitigate the spill the way we tell them to or to provide BLM with plans for mitigation. A lack of appeals from operators receiving INCs on spills support this interpretation.

### Policy

In cases of routine, nominal spills on location that cause undue damage to the surface, BLM Colorado policy will be that inspectors may issue INCs, rather than orders, to the operators, to initiate action on spills when the operator has not contacted the BLM. The operator's mitigation options will be provided for in the "remarks" section of the INC. In cases where the operator has contacted the BLM, no INCs will be issued; however, orders may be issued to clarify mitigation and time frames. This policy only applies to routine and nominal spills which will be monitored to assure that operator's rights are not being infringed upon. Whatever action is taken, it needs to be documented in AFMSS for program review purposes. In cases of multiple small spills by an operator, the field office may want to require an operator to submit a plan to prevent recurrence.

Signed by  
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Authenticate by  
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